

1972—Subsec. (d). Pub. L. 92-576 substituted provisions for conduct of hearings under section 554 of title 5 by a hearing examiner qualified under section 3105 of title 5 and vesting in hearing examiners the powers, duties, and responsibilities vested in deputy commissioners on Oct. 27, 1972, for former provisions authorizing claimant and employer to present evidence with respect to claims and for representation of a claimant under a written authorization.

1960—Subsecs. (c), (e). Pub. L. 86-507 inserted “or by certified mail” after “registered mail”.

1938—Subsec. (g). Act June 25, 1938, authorized transfer of cases, with administrative approval, at any time after filing of claim for the additional purposes of making investigations and taking other necessary action instead of after issuance of compensation order without anyone's approval.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 918, 921 of this title; title 30 section 925.

§ 920. Presumptions

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary—

(a) That the claim comes within the provisions of this chapter.

(b) That sufficient notice of such claim has been given.

(c) That the injury was not occasioned solely by the intoxication of the injured employee.

(d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

(Mar. 4, 1927, ch. 509, § 20, 44 Stat. 1436.)

§ 921. Review of compensation orders

(a) Effectiveness and finality of orders

A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subsection (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) Benefits Review Board; establishment; members; chairman; quorum; voting; questions reviewable; record; conclusiveness of findings; stay of payments; remand

(1) There is hereby established a Benefits Review Board which shall be composed of five members appointed by the Secretary from among individuals who are especially qualified to serve on such Board. The Secretary shall designate one of the members of the Board to serve as chairman. The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.

(2) For the purpose of carrying out its functions under this chapter, three members of the Board shall constitute a quorum and official action can be taken only on the affirmative vote of at least three members.

(3) The Board shall be authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees under this chapter and the extensions thereof. The Board's orders shall be based upon the hearing record. The findings of fact in the decision under review by the Board shall be conclusive if supported by substantial evidence in the record considered as a whole. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier.

(4) The Board may, on its own motion or at the request of the Secretary, remand a case to the administrative law judge for further appropriate action. The consent of the parties in interest shall not be a prerequisite to a remand by the Board.

(5) Notwithstanding paragraphs (1) through (4), upon application of the Chairman of the Board, the Secretary may designate up to four Department of Labor administrative law judges to serve on the Board temporarily, for not more than one year. The Board is authorized to delegate to panels of three members any or all of the powers which the Board may exercise. Each such panel shall have no more than one temporary member. Two members shall constitute a quorum of a panel. Official adjudicative action may be taken only on the affirmative vote of at least two members of a panel. Any party aggrieved by a decision of a panel of the Board may, within thirty days after the date of entry of the decision, petition the entire permanent Board for review of the panel's decision. Upon affirmative vote of the majority of the permanent members of the Board, the petition shall be granted. The Board shall amend its Rules of Practice to conform with this paragraph. Temporary members, while serving as members of the Board, shall be compensated at the same rate of compensation as regular members.

(c) Court of appeals; jurisdiction; persons entitled to review; petition; record; determination and enforcement; service of process; stay of payments

Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court, to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the

order of the Board and enforcing same to the extent that such order is affirmed or modified. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier. The order of the court allowing any stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer, and specifying the nature of the damage.

(d) District court; jurisdiction; enforcement of orders; application of beneficiaries of awards or deputy commissioner; process for compliance with orders

If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(e) Institution of proceedings for suspension, setting aside, or enforcement of compensation orders

Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this title.

(Mar. 4, 1927, ch. 509, § 21, 44 Stat. 1436; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 92-576, § 15(a), (b), Oct. 27, 1972, 86 Stat. 1261, 1262; Pub. L. 95-251, § 2(a)(10), Mar. 27, 1978, 92 Stat. 183; Pub. L. 98-426, § 15, Sept. 28, 1984, 98 Stat. 1649.)

CODIFICATION

As originally enacted, subsec. (d) contained a reference to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted “the district court of the United States for the District of Columbia” for “the Supreme Court of the District of Columbia”, and act June 25, 1948, as amended by act May 24, 1949, substituted “United States District Court for the District of Columbia” for “district court of the United States for the District of Columbia”.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-426, § 15(1), (2), substituted “five” for “three”, and inserted “The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.”

Subsec. (b)(2). Pub. L. 98-426, § 15(3), substituted “three” for “two” wherever appearing.

Subsec. (b)(5). Pub. L. 98-426, § 15(4), added par. (5).

1978—Subsec. (b)(4). Pub. L. 95-251 substituted “administrative law judge” for “hearing examiner”.

1972—Subsec. (b). Pub. L. 92-576, § 15(a), added subsec. (b). Former provisions of subsec. (b) for injunction proceedings to suspend or set aside a compensation order by a party in interest against a deputy commissioner in Federal district court for judicial district where injury occurred superseded by subsec. (c) of this section and former provisions of such subsec. (b) respecting service of process and stay of payments, except for the procedural requirement of an interlocutory injunction to the court and hearing on at least three days’ notice to the parties in interest and the deputy commissioner, incorporated in subsec. (c) of this section.

Subsecs. (c) to (e). Pub. L. 92-576, § 15(a), (b), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

REVIEW OF DECISIONS MADE BY OR PENDING BEFORE BENEFITS REVIEW BOARD

Pub. L. 107-116, title I, Jan. 10, 2002, 115 Stat. 2184, provided in part: “That no funds made available by this Act [see Tables for classification] may be used by the Solicitor of Labor to participate in a review in any United States court of appeals of any decision made by the Benefits Review Board under section 21 of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 921) where such participation is precluded by the decision of the United States Supreme Court in *Director, Office of Workers’ Compensation Programs v. Newport News Shipbuilding*, 115 S. Ct. 1278 (1995), notwithstanding any provisions to the contrary contained in Rule 15 of the Federal Rules of Appellate Procedure [28 U.S.C. App.]: *Provided further*, That no funds made available by this Act may be used by the Secretary of Labor to review a decision under the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 901 et seq.) that has been appealed and that has been pending before the Benefits Review Board for more than 12 months: *Provided further*, That any such decision pending a review by the Benefits Review Board for more than 1 year shall be considered affirmed by the Benefits Review Board on the 1-year anniversary of the filing of the appeal, and shall be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals: *Provided further*, That these provisions shall not be applicable to the review or appeal of any decision issued under the Black Lung Benefits Act (30 U.S.C. 901 et seq.).”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106-554, § 1(a)(1) [title I], Dec. 21, 2000, 114 Stat. 2763, 2763A-10.

Pub. L. 106-113, div. B, § 1000(a)(4) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A-224.

Pub. L. 105-277, div. A, § 101(f) [title I], Oct. 21, 1998, 105 Stat. 2681-337, 2681-345.

Pub. L. 105-78, title I, Nov. 13, 1997, 111 Stat. 1475.

Pub. L. 104-208, div. A, title I, § 101(e) [title I], Sept. 30, 1996, 110 Stat. 3009-233, 3009-241.

Pub. L. 104-134, title I, § 101(d) [title I], Apr. 26, 1996, 110 Stat. 1321-211, 1321-218; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 914, 919, 921a, 939 of this title; title 5 section 8171; title 42 section 1653.

§ 921a. Appearance of attorneys for Secretary, deputy commissioner, or Board

Attorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 921 of this title or other provisions of this chapter except for proceedings in the Supreme Court of the United States.

(May 4, 1928, ch. 502, 45 Stat. 490; June 25, 1948, ch. 646, §1, 62 Stat. 909; Pub. L. 92-576, §16, Oct. 27, 1972, 86 Stat. 1262.)

CODIFICATION

Section was not enacted as part of the Longshore and Harbor Workers' Compensation Act which comprises this chapter.

AMENDMENTS

1972—Pub. L. 92-576 substituted provisions for representation of the Secretary, the deputy commissioner, or the Board by attorneys appointed by the Secretary except for proceedings in the Supreme Court, for former provisions requiring the United States attorney in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the Secretary of Labor or his deputy commissioner when either is a party to the case or interested, and to represent such Secretary or deputy in any court in which such case may be carried on appeal.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney of the United States". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision note thereunder.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 941 of this title.

§ 922. Modification of awards

Upon his own initiative, or upon the application of any party in interest (including an employer or carrier which has been granted relief under section 908(f) of this title), on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case (including a case under which payments are made pursuant to section 944(i) of this title) in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from

the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary. This section does not authorize the modification of settlements.

(Mar. 4, 1927, ch. 509, §22, 44 Stat. 1437; May 26, 1934, ch. 354, §5, 48 Stat. 807; June 25, 1938, ch. 685, §10, 52 Stat. 1167; Pub. L. 98-426, §§16, 27(a)(2), Sept. 28, 1984, 98 Stat. 1650, 1654.)

AMENDMENTS

1984—Pub. L. 98-426, §16, inserted "(including an employer or carrier which has been granted relief under section 908(f) of this title)" after "party in interest" and "(including a case under which payments are made pursuant to section 941(i) of this title)" after "review a compensation case" and inserted at end "This section does not authorize the modification of settlements."

Pub. L. 98-426, §27(a)(2), substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.

1938—Act June 25, 1938, permitted review of compensation case at any time prior to one year after rejection of claim and authorized award of compensation.

1934—Act May 26, 1934, permitted review based on a mistake in a determination of fact; substituted provision for review of compensation case at any time prior to one year after date of last payment of compensation, whether or not compensation order was issued, for original provision for review at any time during term of award and after compensation order in respect of such award had become final; authorized reinstatement of compensation; and inserted exception clause.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

§ 923. Procedure before deputy commissioner or Board

(a) In making an investigation or inquiry or conducting a hearing the deputy commissioner or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before a deputy commissioner or Board shall be open to the public and shall be stenographically reported, and the deputy commissioners or Board, subject to the approval of the Secretary, are authorized to contract for the reporting of such hearings. The Secretary shall by regulation provide for the preparation of a record of the hearings and other proceedings before the deputy commissioners or Board.

(Mar. 4, 1927, ch. 509, §23, 44 Stat. 1437; Pub. L. 92-576, §15(e), Oct. 27, 1972, 86 Stat. 1262; Pub. L. 98-426, §27(a)(2), Sept. 28, 1984, 98 Stat. 1654.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-426 substituted "Secretary" for "commission". See Transfer of Functions note set out under section 902 of this title.